No. 7766

# United States
# Circuit Court of Appeals
## For the Ninth Circuit

THE COUNTY OF MARICOPA, STATE OF ARIZONA,

Appellant.

vs.

OLIVIA ROSEVEARE,

Appellee.

## APPELLANT'S BRIEF

*Upon Appeal from the United States District Court for the District of Arizona.*

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County Attorney,
Maricopa County, Arizona.
E. G. FRAZIER,
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Deputies,
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### STATEMENT OF THE CASE

In 1931 appellee instituted this action in the United States District Court, for the District of Arizona, to recover from appellant money alleged to have been illegally collected by appellant, as and for taxes on certain lands owned by the appellee and her assignors. The complaint alleged that all the money for which a recovery was sought was paid to and received by the appellant more than six years prior to the filing of the action.

Appellant demurred to the complaint on the ground that appellee's several causes of action, if she ever had any, were barred by the statutes of limitation. Appellant also pleaded limitation and a general denial as a defense to appellee's action. The demurrers were

overruled and the case was submitted to the Court without a jury on an agreed statement of facts, and judgment was rendered for appellee for the amount of taxes paid and interest thereon, from which judgment the appellant appeals. The only question before this Court is the correctness of the Court's ruling in overruling the appellant's demurrers raising the defense of limitations and rendering judgment for the amount sued for despite the appellant's plea of limitation.

The original complaint was amended October 19, 1931, the amendment increasing the amount sued for in the original complaint something like One thousand ($1000.00) Dollars, and set out in twenty-one separate counts the several causes of action previously joined in two counts in the original complaint. (Tr. pages 4-52)

To the first amended complaint, the defendant demurred: First, that plaintiff's causes of action were not prosecuted within two years after the same accrued as required by Section 2059, of the Revised Code of Arizona, 1928. Second, that plaintiff's causes of action were not prosecuted within three years after the same accrued as required by Section 2060, of the Code. Third, that plaintiff's causes of action were not prosecuted within four years after the same accrued as required by Section 2063 of the Code. (Tr. 53-54)

The demurrers were overruled and exception taken by appellant. (Tr. page 57)

The appellant answered and plead as a defense the one, two, three and four year statutes of limitation and a general denial of all the allegations of appellee's amended complaint. (Tr. 58-60)

On September 18, 1934, appellee filed a second amended complaint upon which complaint the case was tried. (Tr. 74-121) The second amended complaint did not materially change the legal effect of the first amended complaint. The appellant's demurrers were urged against the second amended complaint and were overruled and an exception taken to the Court's ruling. (Tr. 123)

The second amended complaint alleged, in addition to the jurisdictional facts, that the appellee and her assignors had entered upon several tracts of land of the public domain of the United States, under the United States Reclamation Homestead Act (Act, June 7, 1902), that while appellee and her assignors held such lands, and prior to the issuance of final certificate and patent, the taxing officials of appellant levied, assessed and enforced the collection of taxes on and against said lands, and that appellee and her assignors paid said taxes under protest. That all of said taxes were paid prior to 1925 with the exception of the taxes on one tract of land, described in the twenty-first cause of action (Tr. 119 and 120) which taxes the appellee alleges were paid between January 1, 1916, and the 30th day of December, 1933.

Appellant did not have a right to collect the taxes alleged to have been paid. The United States Supreme

Court, in the case of Irvin vs. Wright, reported in 258 U. S. p. 219 (March 20, 1922) decided that lands so held were not taxable.

The agreed statement of facts filed in the case (Tr. 63-72) stipulates that the several sums of money mentioned in each count of the complaint was paid to the appellant during the period mentioned in each count of the complaint; that such taxes were not paid until after the appellant had threatened to sue to enforce collection of the taxes. The agreed statement of facts also set forth the several amounts paid by appellee and her assignors.

If the appellant could rely on the Statute of limitation as a defense to this action, then appellee was not entitled to recover anything on twenty counts of the amended complaint and only a portion of the amount set forth in the twenty-first cause of action. If the statutes of limitation are not available as a defense to this action, then the appellee is entitled to recover the amounts sued for.

Several statutes of limitation were set up as a defense to the action, however we believe the four year statute, Section 2063 of the Revised Code of Arizona, 1928, applies.

## SPECIFICATION OF THE ERRORS RELIED UPON

### I.

The Court erred in overruling the special demurrer to the Complaint and Amended Complaint filed in this cause for the reason that it

appears upon the face of said complaint and amended complaint, upon which the judgment herein is based, that each of the causes of action set out in said amended complaint is barred by the Statute of Limitations of the State of Arizona and particularly by Section 2059, Revised Code of Arizona, 1928, which said section provides, among other things, that an action for the detention of personal property and conversion of the same, shall be brought within two years after said cause of action accrues; and it appears from the face of said complaint and amended complaint that each of said causes of action accrued more than two years prior to the Commencement of this Action.

II.

The Court erred in overruling the special demurrer to the complaint and amended complaint filed in this cause for the reason that it appears upon the face of said complaint and amended complaint, upon which the judgment herein is based, that each of the causes of action set out in said amended complaint is barred by the Statute of Limitations of the State of Arizona, and particularly by Section 2060, Revised Code of Arizona, 1928, which said section provides that an action upon an indebtedness, not evidenced by a contract in writing, shall be brought within three years after the cause of action shall have accrued, and it appears that from said complaint and amended complaint that all of said causes

of action herein accrued more than three years prior to the commencement of this action.

III.

The Court erred in overruling the special demurrer to the Complaint and Amended Complaint filed in this cause for the reason that it appears upon the face of said complaint and amended complaint, upon which the judgment herein is based, that each of the causes of action set out in said amended complaint is barred by the Statute of Limitations of the State of Arizona, and particularly by Section 2063, Revised Code of Arizona, 1928, which said section provides that all actions other than for recovery of real property, for which no other limitation is otherwise prescribed, shall be brought within four years next after the same shall have accrued; and it appears from the face of said complaint and amended complaint, that each of the causes of action therein set forth, accrued more than four years prior to the commencement of this action.

IV.

The Court erred in rendering the judgment herein for the reason that the same appears to have been based upon an agreed statement of facts, and it appears in said agreed statement of facts that each of the causes of action set forth in the complaint and amended complaint is barred by the Statute of Limitations, and par-

ticularly by the provisions of said Sections 2059, 2060 and 2063, Revised Code of Arizona, 1928; in that it appears in said agreed statement of facts that each of said causes of action sued on herein accrued more than four years prior to commencement of this action.

## ARGUMENT AND AUTHORITIES IN SUPPORT OF THE SPECIFICATIONS OF ERROR

This is a statutory action brought under the provisions of Section 3136, Revised Code of Arizona, 1928, and is an action at law in the nature of an action for money had and received. Said section reads as follows:

> "*Tax not to be contested unless paid; collection may not be enjoined.* No person upon whom a tax has been imposed under any law relating to taxation shall be permitted to test the validity thereof, either as plaintiff or defendant, unless such tax shall first have been paid to the proper county treasurer, together with all penalties thereon. No injunction shall ever issue in any action or proceeding in any court against this state, or against any county, municipality, or officer thereof, to prevent or enjoin the collection of any tax levied. After payment an action may be maintained to recover any tax illegally collected, and if the tax due shall be determined to be less than the amount paid, the excess shall be refunded in the manner hereinbefore provided."

The several statutes of limitation pleaded by appellant as a defense to this action are as follows:

> "Sec. 2059. *Two year limitation.* There shall be commenced and prosecuted within two years after the cause of action shall have accrued, and not afterward, the following action, for: 1. Injuries done to the person of another; 2. trespass for injury done to the estate or the property of another; 3. detaining the personal property of another and for converting such personal property to one's own use; 4. taking or carrying away the goods and chattels of another; 5. injuries done to the person of another where death ensued from such injuries, which action shall be considered as having accrued at the death of the party injured."
>
> "Sec. 2060. *Three year limitations.* There shall be commenced and prosecuted within three years after the cause of action shall have accrued, and not afterward, the following actions: 1. Debt where the indebtedness is not evidenced by a contract in writing; 2. upon stated or open accounts other than such mutual and current accounts as concern the trade of merchandise between merchant and merchant, their factors or agents; provided, that no item thereof shall have been incurred within three years immediately prior to the commencement of any action thereon; 3. for relief on the ground of fraud or mistake, which cause of action shall not be deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud or mistake."

> "Sec. 2063. *General limitation.* Actions other than for the recovery of real property, for which no limitation is otherwise prescribed, shall be brought within four years next after the right to bring the same has accrued, and not afterward."

## A CAUSE OF ACTION ACCRUED IN FAVOR OF APPELLEE ON THE DATE OF PAYMENT OF THE TAX, AND LIMITATION BEGIN TO RUN ON THAT DATE.

A demand or claim for the repayment of the tax is not a condition precedent to bringing an action for the recovery of taxes illegally collected. Arizona Eastern Railway Company vs. Graham County, 20 Ariz. 257, 179 Pac. 959. In Western Ranches vs. Custer County, 89 Fed. 577 (C. C. Mont.) the court, speaking of a Montana statute similar to said section 3136, said the statute giving a remedy to sue for taxes illegally collected was a special remedy provided by law and the presentation of a claim to the County Board was not a condition precedent to the bringing of a suit. The Court said a condition not named in a statute is not required. See also Birch vs. Orange County, 186 Cal. 736, 200 Pac. 647, and 61 C. J. pp. 998-9.

As a cause of action accrued in favor of the appellee and her assignors at the time of the payment of the taxes to the County, and a demand for the repayment was unnecessary, the statute of limitation begin to run against appellee's and her assignors' claims on the dates of payment.

In United States vs. Southern Surety Co., 9 Fed. (2d) 664, the Court said:

> "Where a cause of action arises in favor of the person paying the taxes not legally due to the County, the limitation begins to run from the date of payment."

In Centenial Eureka Mining Co. vs. Jaub County, 22 Utah 395; 62 Pac. 1024, the court used this language:

> "When a party pays an unlawful tax under protest a cause of action under provisions of Sec. 180 at once accrues in favor of such party to recover such tax and the statute of limitations begins to run from the date of payment."

In Callanan vs. County of Madison, 45 Ia. 561, the Court held that a cause of action for the recovery of money from a County which was alleged to have been paid as and for taxes illegally collected, accrued in favor of the taxpayer at the very moment of payment and an action to recover such taxes was barred, if suit was not brought within the period of limitation after the date of payment.

Spinning vs. Pierce County, 20 Wash. 126; 54 Pac. 1006, was brought to recover from the County certain fees illegally collected by the Sheriff from a litigant and paid to the County by the Sheriff. The County interposed a defense of the statutes of limitation and the court held that limitation begin to run

against the plaintiff's claim from the date of the payment of the fees to the officer and that the plaintiff's cause of action was barred by the statutes of limitation because it was not commenced within the period of limitation.

In Morton vs. City of Nevada, 41 Fed. 582 (C. C. Mo.), an action was commenced to recover money paid to the City by a purchaser of bonds, which bonds were later declared invalid by the Court. The City pleaded the statutes of limitation as a defense to the action; the Court held that the cause of action accrued at the time of the payment of the money to the City and the plaintiff's claim was barred by the statutes of limitation.

Many other cases support our contention but we shall only refer to some of the better reasoned and leading cases:

Rosedale v. Towner County, 56 N. Dak. 41, 216 N. W. 212;

City of Centerville v. Turner County, 23 S. Dak. 424; 122 N. W. 350; on rehearing, 126 N. W. 605;

Strough v. Board of Supervisors, 119 N. Y. 212; 23 N. E. 552;

Re Elm St. in New York, 239 N. Y. 220; 146 N. E. 342;

City of Webster v. Day Co., 26 S. Dak. 50; 127 N. W. 624;

Sioux City & St. Paul Railway v. O'Brien County, 118 Iowa 582; 92 N. W. 857;

Jones v. School District, 26 Kan. 490;

Pac. Coal Co. v. Pierce Co., 133 Wash. 278; 233 Pac. 953;

Parsons v. City of Rochester, 43 Hun 258 (N. Y.);

3 Cooley on Taxation, 4th Ed. p. 2593, Sec. 1304; 61CJ1000.

Appellee's pleadings and the agreed statement of facts show conclusively that the appellee and her assignors paid the several sums of money to the County more than four years prior to the institution of this action, with the exception of part of the payments mentioned in the twenty-first cause of action. Therefore, appellees' causes of action were barred by all the statutes of limitation (sections 2059, 2060 and 2063) and the appellant's demurrers should have been sustained and judgment rendered in favor of appellant.

THE PAYMENT OF THE MONEY TO APPELLANT DID NOT CREATE A TRUST RELATIONSHIP.

It was urged in the Court below that the money which had been collected from appellee and her assignors was held in trust by the County, and therefore, the statutes of limitation did not run against appellee's causes of action.

A trust relationship was not created when the money was paid to the County. The County demanded, received and retained it under a claim of right, and appellee and her assignors paid the money to the County under protest and disputed the County's right to collect it. When the money was paid to the County Treasurer it became his duty, under the law, to immediately apportion the money to the various County funds set up by law, and the Board of Supervisors. Sections 775 and 864, Revised Code of Arizona, 1928, which reads as follows:

> "775. *Expense fund; annual budget; duties of treasurer.* The board shall create a fund known as the expense fund, and shall order, whenever necessary, the transfer of sufficient money into said fund from the general fund of such county to pay the expenses of maintaining the government of such county until additional revenues may be collected to defray such expenses. * * * The county treasurer shall make such transfer when ordered by such board, and pay from such expense fund orders drawn thereon by the board for the maintenance of the county government, such orders to be drawn and signed as county warrants. * * *
>
> 864. *Duties.* The county treasurer shall: 1. Receive all money of the county, and all other money directed by law to be paid to him, safely keep, apply and pay the same and render account thereof as required by law; 2. keep an account of the receipt and expenditure of such money in

> books provided for that purpose; in which must be entered the amount, the time when, from whom, and on what account the money was received by him; the amount, time, when, to whom, and on what account disbursements were made by him; 3. keep his books so that the amount received and paid out on account of separate funds or specific appropriations are exhibited in separate and distinct accounts, and the whole receipts and expenditures shown in one general or cash account; and, 5. disburse the county money only on county warrants, issued by the board of supervisors, signed by the chairman and clerk of such board, or as provided by law."

and it was the duty of the county board to expend the money, to the credit of the various county funds to discharge county obligations.

The Court will presume that the treasurer and board performed their duties as required by law. When the county officers performed these duties, their actions amounted to an open assertion of a right to the money, adverse to the appellee's claim thereto, and if a trust relationship ever existed, the County's action in asserting ownership to the funds adversely to appellee's right, and handling them as its own was a repudiation of the trust, if any, and started the statutes of limitation to running.

In Rosedale School District vs. Towner County, supra, a contention was made that when money was received by a County for taxes illegally levied, assess-

ed and collected, a trust relationship was created between the county and the taxpayer, and that limitation did not run against an action to recover the money. But the court did not sustain the contention and said:

> "The next question for consideration is whether the transaction is one to which the staute is applicable. We think it is. Trusts are classified by the laws of this state as either voluntary or involuntary.
>
> "It will be noted that the county treasurer was and is the tax collector for both the school district and the county. It was his duty to collect all taxes due from the taxpayers of the county and to distribute the moneys received from the various taxpayers, respectively, to the state, county, and the subordinate political subdivisions of the county. On the first day of each month of each year he was required to make a full settlement with the county auditor and to distribute and credit to the proper funds all moneys which he had collected since the last settlement. It is presumed that this duty was regularly performed. There is no contention in this action that the county treasurer or the defendant county acted fraudulently or collusively or that the county received the money as the result of any fraud or collusion."

And then the Court used this language:

> "At the time of each settlement (that is, on the 1st day of each month), the county treasurer, in

distributing such funds, credited to the county (i.e., placed into the treasury of the county), all moneys collected for penalty and interest upon taxes of the plaintiff school district. The defendant county received the money as its money and not as money to be kept for the plaintiff. All of this was done openly and publicly. There was no fraudulent concealment. The county having received moneys belonging to the plaintiff school district, in these circumstances, the law implied an obligation or promise on the part of the county to repay it. This obligation arose when the county treasurer credited the moneys to the county.

"While there arose, by operation of law, an obligation on the part of the county to pay over to the school district the money belonging to the school district, and which the county treasurer through mistake had paid to the county, no such trust relation was created as prevents the operation of the statute of limitations. The equitable rule that the statute of limitations does not run in favor of the trustee against the cestui que trust applies only to express or voluntary trust and does not apply to implied or involuntary trusts."

See also School Directors vs. School Directors, 105 Ill. p. 653.

Strough vs. Board of Supervisors, supra, was an action to recover from the County money collected as

taxes for a certain purpose, but diverted by the County to another purpose. In that case, the County defended upon the ground that the plaintiff's cause of action was barred by the statutes of limitation. The plaintiff contended there was a trust relationship existing between the plaintiff and the County and that limitation did not run against the plaintiff's claim. In this case the Court said:

> "The duty imposed upon the treasurer was in a general sense a trust duty. This is true of every duty imposed upon a public officer, but persons injured by a violation of the duty for which they may maintain an action at law must pursue their remedy within the period of limitation of legal actions."

In Sioux City & St. Paul Railway vs. O'Brien County, supra, the Court held that even though a suit to recover taxes illegally collected is of an equitable nature, that the statutes of limitation are applicable as a defense to such an action.

> See also Beaubien vs. Beaubien, 23 How 190; 16 L Ed. 484.

In City of Centerville vs. Turner County, supra, the Court said:

> "It is contended on the part of plaintiff that inasmuch as the trial court found that the defendant is made by law the agent of the plaintiff to collect the said taxes, and that the relation-

> ship between plaintiff and defendant was a fiduciary one, and that said taxes when collected, were a trust fund in the hands of the defendant, in the execution of an express trust, the statute of limitations will not run. This seems to be the general rule in some jurisdictions where there has been a misappropriation of trust funds; but, even in those jurisdictions, it seems to be held that, where the public officer or municipality retains the money under claim or color of right, as in the case at bar, then the statute of limitations applies, and that the claim will be barred after the statutory limit has expired. 25 Cyc. 1164; Newsom v. Bartholomew, 103 Ind. 526, 3 N. E. 163; Churchman v. Indianapolis, 110 Ind. 259, 11 N. E. 301; Jasper Twp. v. Wheatland Twp., 62 Iowa, 62, 17 N. W. 205."

In the case of Centerville vs. Turner County, supra, a rehearing was granted and another opinion was written, 126 N. W. 605, wherein the Court adhered to and more fully discussed the rule announced in the original opinion.

FUNDS IN APPELLANT'S HANDS WERE NOT IMPRESSED WITH A TRUST BECAUSE APPELLEE DID NOT DESIGNATE OR TRACE ANY FUND UPON WHICH A TRUST OPERATED.

The pleadings and the agreed statement of facts do not point out or trace any particular fund or money upon which a trust was impressed. The money which appellee and her assignors paid to appellant was received and commingled with all the other funds

of appellant. It is elementary that to impress a trust upon a fund, the cestui que trust must point out or trace the particular money or funds impressed with the trust. Merely showing that the money was paid into a general fund does not establish a trust. In Korrick v. Robinson, 20 Ariz. 323, 180 Pac. 446, the court held:

> "The great weight of authority holds that it is not sufficient for a cestui que trust to prove that his money originally passed into the hands of an insolvent, and was used by him in his business. In following a trust fund, a court of equity will, as far as possible, aid the cestui que trust, by indulging every reasonable presumption in his favor, but with all of this advantage the cestui que trust must, in the end, locate the trust fund in the specific property he seeks to take out of the general assets of the insolvent trustee."

McComas v. Long, 85 Ind. 549, Thompson's Appeals, 22 Pa. St. 16.

IF ANY TRUST WAS CREATED IT WAS AN IMPLIED OR CONSTRUCTIVE TRUST AND LIMITATION BEGAN TO RUN AGAINST IT ON THE DATE OF ITS CREATION.

If the Court concludes that a trust was created by the transactions set up in this record, then it was not such a trust as would prevent the running of the statutes of limitation. The transaction does not show the existence of an express trust; an express

trust is only created by the direct and positive acts of the parties by some writing or deed or by words, either expressly or impliedly, evincing an intention to create a trust. 65 C. J. p. 220. Neither did the acts of the parties create a resulting trust. A resulting trust is one raised by implication of law and presumed always to have been contemplated by the parties, the intention as to which is to be found in the nature of their transaction but not expressed in the deed or instrument. 65 C. J. 222. The record fails to show any action of the parties from which it could be inferred or implied that they contemplated creating a resulting trust. The record shows affirmatively that the parties did not contemplate that a trust relationship should be created. Appellant demanded and enforced the payment of the money and retained it as its own, and appellee and her assignors paid the money under protest, to keep appellant from selling their property. This disproves the existence of an express or a resulting trust.

If any trust was created it was a constructive or implied trust, as such trusts are defined by the Supreme Court of Arizona in the case of MacRae vs. MacRae, 37 Ariz. 307; 294 Pac. 280, as follows:

> "A constructive trust is one which does not arise by agreement or from the intention of the parties, but by operation of law, and fraud, actual or constructive, is an essential element thereto. Actual fraud is not always necessary, but such a trust will arise whenever the circumstances under which the property was acquired make it

> inequitable that it should be retained by the one who holds the legal title. These trusts are also known as trusts ex maleficio or trusts ex delicto."

The statutes of limitation begin to run against a constructive, implied or involuntary trust on the date of the creation of the trust, and if the facts pleaded and proved in this case did show that a constructive or implied trust was created, the same was created more than four years prior to the institution of the appellee's action and the plaintiff's causes of action were barred by the above quoted section of the statute. In Merrill vs. Montecello, 66 Fed. 165, affirmed 72 Fed. 462; 18 C. C. A. 636, the Court said:

> "In the case of an implied or constructive trust it is equally well settled unless there has been fraudulent concealment of the cause of action, lapse of time is as complete a bar in suits in equity as in actions at law, and the statutes of limitation begins to run when the cause of action has accrued."

In Cooper vs. Hill, 94 Fed. 582; 36 C. C. A. 402, the Court decided:

> "But lapse of time is a complete bar to a constructive or implied trust, both in equity and at law, unless there has been a fraudulent concealment of the cause of action, or other extraordinary circumstances which make the application of the doctrine of laches inequitable. Hayden v. Thompson, 36 U. S. App. 362, 377, 17 C. C. A. 592, 601, and 71 Fed. 60, 69."

In the case of Speidel vs. Henrici, 120 U. S. 377; 30 L. Ed. 718, it was decided:

> "In the case of implied or constructive trusts unless there has been fraudulent concealment of the cause of action, lapse of time is as complete a bar in equity as at law."

From Rosedale School District vs. Towner County, supra, we quote as follows:

> "The equitable rule that the statutes of limitation does not run in favor of the trustee against the cestui que trust applies only to express or voluntary trusts and does not apply to implied or involuntary trusts."

See also: Norton v. Bassett 154 Cal. 411; 97 Pac. 894; 129 Am. St. Rep. 162; Hayman v. Keally, 11 Fed. case No. 6265; 3 Cranch C. C. 325; 37 C. J. 909; 17 R. C. L. p. 711, sec. 66.

LIMITATION WAS A DEFENSE TO APPELLEE'S ACTION BECAUSE THIS WAS AN ACTION AT LAW TO COLLECT A DEBT AND NOT A SUIT IN EQUITY TO ESTABLISH OR ENFORCE A TRUST.

If a trust relationship existed between appellant and appellee the statutes of limitations are applicable for the reason that this is an action at law to recover a debt and is not an action in equity to establish or enforce a trust. The doctrine that a trust is exempt from the operation of the statutes of limitation ap-

plies only to trusts over which only a court of equity has jurisdiction, and does not apply where there is a concurrent legal remedy. Miles vs. Vivian, 79 Fed. 848 (C. C. A.); Hayward vs. Gunn, 82 Ill. 385; Wingate vs. Wingate, 11 Tex. 433. From Kennedy vs. Baker, 59 Tex. 150, we quote as follows:

> "But it does not follow that every kind of trust forms an exception to the operation of the statute of limitations; if so, half the business transactions of men would be removed from its influence. Their doctrine has been settled by a train of decisions in the case of Lackey v. Lackey, Prec. in Ch. 518, decided by Lord Macclesfield, down to the present time, that to remove a trust from the operation of the statute it must be such a trust, technically, as is created by the mutual confidence of the parties, such as equity alone can take cognizance of and afford redress. If it is a trust that common law courts could give relief, the statute will run although the party may have sought his relief in chancery."

## CONCLUSION

As to the twenty-first cause of action, it is alleged that certain taxes were paid after the filing of the original and first amended complaint and about twelve or thirteen years after the Supreme Court of the United States held that such taxes could not be collected. They were paid voluntarily but apparently were paid in an effort to bolster up the causes of action set forth in the other twenty counts of the complaint. There is no justification for the payment of these taxes at such a late date and judgment should

have been in favor of the defendant on each cause of action.

We respectfully submit that the judgment of the lower Court should be reversed and the cause remanded with instructions to sustain appellant's demurrers, and enter judgment for the defendant, for all of which we respectfully pray.

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